



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

201105047

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

NOV - 8 2010

Uniform Issue List: 408.03-00

SETTLEMENT

Legend:

Taxpayer A	=
IRA X	=
Custodian B	=
Amount D	=
Financial Institution C	=
Individual W	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Date 7	=

Dear :

This is in response to your letter dated , as supplemented by your letter dated , and fax transmittals dated and , in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A, age , represents that he received distributions of amounts from IRA X totaling Amount D. Taxpayer A asserts that his failure to accomplish a rollover of Amount D within the 60-day rollover period prescribed by section 408(d)(3) of the Code was due to the fact that he believed he had completed the rollover and did not receive notice that the rollover had failed until months later as a result of first being out of town, then being occupied with assisting family members and finally due to the onset of a serious medical condition. Taxpayer A also represents that Amount D has not been used for any other purpose.

Taxpayer A maintained IRA X with Custodian B. On Date 1, Taxpayer requested a total distribution of Amount D from IRA X. On the following day, Taxpayer A received most of the balance of IRA X and, on Date 2, Taxpayer received a check for the remainder of the balance of IRA X. Taxpayer A intended to roll over Amount D into another IRA that he established on Date 3 at Financial Institution C. However, Financial Institution C informed Taxpayer A that it could not accept endorsed third-party checks. Therefore, Taxpayer A deposited the checks into his personal checking account on Date 3. Four days later, on Date 4, Taxpayer A wrote a check for Amount D and mailed it to Financial Institution C along with a completed rollover form. Assuming that the rollover had been completed, Taxpayer A left town on family business on Date 4 and had his mail held at the post office. During this time, on Date 5, Financial Institution C sent a letter to Taxpayer A, returning the check and notifying him that the rollover had not been completed because the rollover form had been filled out incorrectly. When Taxpayer A returned home on Date 6, he immediately became involved in helping his daughter move her household to another state. This process took two weeks, after which Taxpayer A again travelled out of town for a few days, returning four days before the end of the 60-day rollover period. During all of this time, Taxpayer A's wife, Individual W, would sort the family mail and set aside junk mail and other items for Taxpayer A to look at later. Individual W did not recognize the letter from Financial Institution C as an important piece of correspondence and put it aside for Taxpayer A to look at when he had time. Upon returning home from his second trip, Taxpayer A was not feeling well and was diagnosed with a serious heart condition a few days after the end of the 60-day rollover period. Following heart surgery and a lengthy recovery, Taxpayer A did not have an opportunity to review his accumulated mail. On Date 7, Taxpayer A found the letter from Financial Institution C and realized that the rollover had not been completed as intended.

Based on the facts and representations, you request a ruling that the Internal Revenue Service (the "Service") waive the 60-day rollover requirement with respect to Amount D.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only

distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover of Amount D was due to the fact that he believed that he had completed the rollover and did not receive notice of the rollover's failure until months later, due to his being out of town, then being occupied with family business and finally suffering from a serious medical condition.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount D from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount D into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount D will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact
(ID #) at () - . Please address all correspondence to

201105047

Sincerely yours,

Ada Perry

for

Laura B. Warshawsky, Manager
Employee Plans Technical Group 4

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose